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JUL 09 2009

OFFICE OF PETITIONS

In re Application of :
Michael Gauselmann :
Application No. 09/491779 :
Filing or 371(c) Date: 01/26/2000 :
Attorney Docket Number: :
ADP231 : ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 24, 2009, to revive the above-identified application.

This Petition is hereby dismissed.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

A non-final Office action was mailed December 31, 2007. Applicant filed an Amendment in response to the Office action on April 4, 2008, and Supplemented the Amendment on April 30, 2008. The Amendment and Supplement were non-compliant. Applicant was so notified in a Notice of Non-Compliant Amendment, mailed June 18, 2008. The Notice set a one (1) month period for reply, and provided for extensions of time under 37 CFR 1.136(a). Applicant filed an Amendment in response to the Notice on July 21, 2008. The Amendment was again non-compliant. Applicant was so notified in an Office communication, mailed October 16, 2008. The Office communication informed Applicant that the Amendment filed July 21, 2008 was not fully responsive to the Notice mailed June 18, 2008. The Office communication set no new period for reply, but instead informed applicant that "[i]n no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date set forth in the Office action. A fully responsive reply must be timely filed to avoid abandonment of this application."

Applicant filed an Amendment in response to the Office communication on November 19, 2008. The Amendment was again non-compliant. No complete and proper reply to the Notice of Non-

Compliant Amendment, mailed June 18, 2008, having been filed, the application became abandoned July 19, 2008.

The Office mailed a Notice of Abandonment on February 6, 2009. The Notice of Abandonment indicated as the reason for abandonment Applicant's failure to file a proper reply to the Notice of Non-Compliant Amendment, mailed June 18, 2008, noting the numerous non-compliant amendments filed by Applicant.

The present petition

Applicant files the present petition; however, the petition does not reference a reply. It is noted that Applicant filed an Amendment on February 17, 2009.

Applicable Law, Rules and MPEP

A grantable petition pursuant to this paragraph must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

Applicant lacks item (1) as set forth above.

Analysis and conclusion

As to item (1), the petition does not reference a reply. Assuming, arguendo, that the Amendment filed February 17, 2009, is intended as the reply, the Examiner has reviewed the Amendment and provides the following: Claim 15, line 11 has been changed from "if an" to "if on" without having been marked and the status of the claim is not listed as amended. As such, the Amendment is non-compliant.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Inquiries regarding the Amendment should be directed to the Examiner. Telephone inquiries concerning this petition Decision should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions